IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Writ Petition No. 66l of l992

Ashok Raghoba Ambre . petitioner

vs

M/s Hindustan Petroleum Corpn Ltd..respdt

Mr S.S.Pakale for petitioner

Mr. S.K.Talsania i/b Sanjay Udeshi & Co for respondents

CORAM;A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 28.l.2005

P C:

1. By this petition under Article 226 the petitioner prays that he be declared as permanent workman of the respondent in the post of Compounder/ Dresser with effect from6.6.l987 and the respondent corporation be directed to pay to the petitioner all the benefits accruing by virtue of his permanency including fitment with annual

increments in the appropriate grade with retrospective effect.

2. The undisputed facts of the case are that the petitioner has been working as Compounder/Dresser with the respondent corporation for more than 20 years. He was working as Compounder/Dresser from l7.l0.l984 to l7.ll.l99l at Fuels Refinery and from l8.ll.l99l to 30.6.l996 in Lube Refinery as well as in the Fuels Refinery. The petitioner was paid his wages at the rate of Rs.l000 per month initially and thereafter at the rate of Rs.55 per shift. During the pendency of the petition, the services of the petitioner were terminated from l.7.l996. The petitioner raised an industrial dispute and a reference came to be made to the Industrial Tribunal under section l0(2)(a) and (d) of the Industrial Disputes Act, l947. The Presiding Officer of the Industrial Tribunal by his award dated l0.4.2003 granted to the petitioner reinstatement with full backwages. The award of the Industrial Tribunal was challenged in Writ Petition No. l49l of 2004.The writ petition was dismissed by the learned single Judge against which Letters Patent Appeal No.ll4 of 2004 was preferred by the respondent corporation. This appeal was dismissed by the division bench to which one of us

(A.P.Shah J.) was a party vide order dated 8.6.2004. Consequently the petitioner has been reinstated in service. The question is whether the petitioner is entitled to permanency as prayed in the petition.

3. The only contention raised by Mr Talsania,learned counsel appearing for the respondent corporation was that the petitioner was not qualified to be appointed as a Compounder/ Dresser. In other words he was illegally appointed. It was therefore contended that the petitioner is not entitled to claim status of permanent employee. According to Mr.Talsania the appointment made in violation of the mandatory provisions of the statute and in particular ignoring the minimum educational qualifications and other essential qualifications would be wholly illegal and such illegality cannot be cured by taking recourse to regularisation. He placed reliance on the decision of the Apex Court in A Umarani vs Registrar, Cooperative Societies and ors, (2004) 7 SCC ll2. On the other hand Mr.Pakale, appearing for the petitioner contended that the petitioner was qualified to hold the post of Compounder/Dresser. He had passed S.S.C in the year l969. He had also passed his 3rd and final

First Aid Examination and is holding Medallion Certificate issued by St John Ambulance Association of St John Ambulance Association (India) . He had also passed Home Nursing Examination of St John Ambulance Association (India) He had experience of l4 years as Compounder- Dresser prior to his employment with the corporation. Mr. Pakale also contended that this very issue was raised before the Industrial Tribunal and the Tribunal categorically held that the petitioner was fully qualified.This finding of the Tribunal has been confirmed by this court.

4. Having considered the rival submissions we are of the opinion that in the facts and circumstances of the case the petitioner is clearly entitled to the status of permanent employee. It has not been disputed by the respondent that the petitioner has been working as Compounder- Dresser right from l984. In l984 the petitioner was working as releaving Compounder/dresser and thereafter he was employed intermittently on and off during the years l985 to l987 and on and from June l987 the petitioner has been regularly working at the respondent's clinic as Compounder/ Dresser except for weekly off and leave. It is also not disputed before us that there is requirement of

Compounder/Dresser at the Refinery which is working all throughout 7 days in a week. The contention that the petitioner was not qualified to be appointed as Compounder-Dresser was also raised before the Industrial Tribunal and the Tribunal while rejecting this contention held thus:

> " The question is when the workman was appointed whether there were any qualification prescribed. The corporation has placed on record document M2. It is Hindustan Petroleum Corporation Limited Bombay Refinery Recruitment Policy and Procedure. This document begins at page 25 and at page 45 the item R.08 of the schedule prescribed job specification for induction level of Compounder-cum- dresser.He must have SSC and three certificate in nursing conducted by Maharashtra Nursing Council.This item is related to clause 3 i.e. Principles Governing recruitment. Firstly, it has to be noticed these are merely policy statement made by the Corporation.Secondly it has to be determined whether this policy decision had come into force at the time the workman was appointed.Dayanand Kalmade was unable to say

when this document M2 had come into force. He specifically stated that he was referring to Recruitment Policy and Procedure (Non-Management).There is nothing in evidence of R.G.Gokhale of Dr. Nikhale regarding the aforesaid policy procedure specifically. In view of this mater this tribunal holds that the Corporation has failed to prove that the workman was governed by qualification mentioned in item R.08 of schedule of Recruitment Policy and Procedure (M2).The workman has stated that he had passed SSC examination l969. He was having certificate from St.John Ambulance Association of India. He had claimed that he had passed First Aid Examination.He had at time of appointment experience of l4 years. Under these circumstances it would not be proper to hold that the workman was appointed in the breach of policy laid down by the Corporation.The corporation has failed to establish that the procedure given in M2 was prevalent in the year l984. Moreover, even if the policy decision was breached in appointing the workman his appointment cannot be illegal in the sense it was prohibited by law. The clause 3.3 appears to say that

qualifications given therein will be primary consideration. This tribunal is of the view that corporation itself had allowed the workman to work as a daily wager for l2 years. It could not turn round after l2 years to say that the initial appointment was bad and therefore subsequent retrenchment cannot be set aside. and the workman cannot be reinstated This tribunal is of the opinion that appointment in the breach of policy is merely irregular but not illegal. Moreover an illegal act has to be set aside by a Collateral authority.The person appointing a person cannot after long lapse of time should not be allowed to take advantage of his own lapse. If he be permitted to do , the court or the tribunal shall be playing a game of dice with the lives of men, particularly so in service matter".

5. In view of the above finding of Industrial Tribunal which has been confirmed by this court, it is wholly impermissible for the respondent to contend that the petitioner’s appointment was not in accordance with rules. The initial minimum educational qualification prescribed for the

different posts is undoubtedly a factor to be reckoned with, but once the appointment is made and the petitioner has been allowed to work for almost two decades, it would be hard and harsh to deny him the confirmation in the post on the ground that he lacks the prescribed educational qualification. We therefore hold that the petitioner is entitled to the status of permanent employee of the corporation and accordingly we make the rule absolute in terms of prayer clause (a) with modification that the petitioner would be entitled to permanency with effect from the date of filing of the petition i.e. l6.3.l992. Petition is accordingly disposed of.